

PT 96-6

Tax Type: PROPERTY TAX

Issue: Religious Ownership/Use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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CHRISTMAS TREE ROAD )

BAPTIST CHURCH )

Applicant )

v. )

THE DEPARTMENT OF REVENUE )  
OF THE STATE OF ILLINOIS )

Docket # 94-58-78

Parcel Index # 18-08-33-151-005

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RECOMMENDATION FOR DISPOSITION

SYNOPSIS:

THE HEARING IN THIS MATTER WAS HELD AT 101 WEST JEFFERSON STREET, SPRINGFIELD, ILLINOIS ON APRIL 15, 1996, TO DETERMINE WHETHER OR NOT PART OF MACON COUNTY PARCEL NUMBER 18-08-33-151-005, CONTAINING 1.7 ACRES QUALIFIES FOR EXEMPTION FOR ALL OR PART OF THE 1994 ASSESSMENT YEAR.

REV. MITCHELL FLESCHE, PASTOR OF CHRISTMAS TREE ROAD BAPTIST CHURCH (HEREINAFTER REFERRED TO AS THE "APPLICANT"), TESTIFIED ON BEHALF OF THE APPLICANT.

THE ISSUES IN THIS MATTER INCLUDE FIRST, WHETHER THE APPLICANT IS A RELIGIOUS ORGANIZATION. THE SECOND ISSUE IS WHETHER THE APPLICANT USED THIS PARCEL FOR RELIGIOUS PURPOSES DURING THE PORTION OF THE 1994 ASSESSMENT YEAR THAT IT OWNED SAID PARCEL. FOLLOWING THE SUBMISSION OF ALL OF THE EVIDENCE AND A REVIEW OF THE RECORD, IT IS DETERMINED THAT THE APPLICANT IS A RELIGIOUS ORGANIZATION. IT IS ALSO DETERMINED THAT THIS

PARCEL WAS VACANT AND NOT USED FOR ANY PURPOSE BY THE APPLICANT DURING THE PORTION OF THE 1994 ASSESSMENT YEAR THAT THE APPLICANT OWNED SAID PARCEL.

FINDINGS OF FACT:

1. THE APPLICANT WAS INCORPORATED BY AFFIDAVIT PURSUANT TO THE RELIGIOUS CORPORATION ACT, §05 ILCS 110/0.01 ET SEQ ON JULY 28, 1991. (DEPT. EX. 1H)

2. DURING THE 1994 ASSESSMENT YEAR THE APPLICANT HAD APPROXIMATELY 105 MEMBERS AND AN AVERAGE ATTENDANCE AT SUNDAY MORNING WORSHIP SERVICES OF 70 TO 80 PERSONS. (TR. P. 9)

3. DURING 1994 THE APPLICANT HELD WORSHIP SERVICES AT A BUILDING OWNED BY THE CENTRAL BAPTIST ASSOCIATION, WHICH WAS LOCATED NEAR THE PARCEL HERE IN ISSUE. (TR. P. 9)

4. DURING 1994 THE APPLICANT HELD WORSHIP SERVICES AT 8:15 A.M. AND 10:45 A.M. ON SUNDAY MORNINGS AND AT 6:00 P.M. ON SUNDAY EVENINGS, AND ALSO AT 7:00 P.M. ON WEDNESDAY EVENINGS. (TR. P. 10)

5. THE APPLICANT ACQUIRED THIS PARCEL BY A QUITCLAIM DEED DATED SEPTEMBER 12, 1994. (DEPT. EX. 1E)

6. REV. MITCHELL FLESCH TESTIFIED AT THE HEARING IN THIS MATTER THAT THIS PARCEL WAS VACANT WHEN THE APPLICANT ACQUIRED IT AND THAT THE APPLICANT DID NOT USE IT FOR ANY PURPOSE DURING THE PERIOD SEPTEMBER 12, 1994, THROUGH DECEMBER 31, 1994. (TR. PP. 7 AND 8)

CONCLUSIONS OF LAW:

ARTICLE IX SECTION 6 OF THE ILLINOIS CONSTITUTION OF 1970, PROVIDES IN PART AS FOLLOWS:

THE GENERAL ASSEMBLY BY LAW MAY EXEMPT FROM TAXATION ONLY THE PROPERTY OF THE STATE, UNITS OF LOCAL GOVERNMENT AND SCHOOL DISTRICTS AND PROPERTY USED EXCLUSIVELY FOR AGRICULTURAL AND HORTICULTURAL SOCIETIES, AND FOR SCHOOL, RELIGIOUS, CEMETERY AND CHARITABLE PURPOSES.

35 ILCS 200/15-40 PROVIDES IN PART AS FOLLOWS:

ALL PROPERTY USED EXCLUSIVELY FOR RELIGIOUS PURPOSES, OR USED EXCLUSIVELY FOR SCHOOL AND RELIGIOUS PURPOSES...AND NOT LEASED OR OTHERWISE USED WITH A VIEW TO PROFIT, IS EXEMPT,....

IT IS WELL SETTLED IN ILLINOIS, THAT WHEN A STATUTE PURPORTS TO GRANT AN EXEMPTION FROM TAXATION, THE FUNDAMENTAL RULE OF CONSTRUCTION IS THAT A TAX EXEMPTION PROVISION IS TO BE CONSTRUED STRICTLY AGAINST THE ONE WHO ASSERTS THE CLAIM OF EXEMPTION. INTERNATIONAL COLLEGE OF SURGEONS V. BRENZA, 8 ILL.2D 141 (1956). WHENEVER DOUBT ARISES, IT IS TO BE RESOLVED AGAINST EXEMPTION, AND IN FAVOR OF TAXATION. PEOPLE EX REL. GOODMAN V. UNIVERSITY OF ILLINOIS FOUNDATION, 388 ILL. 363 (1941). FINALLY, IN ASCERTAINING WHETHER OR NOT A PROPERTY IS STATUTORILY TAX EXEMPT, THE BURDEN OF ESTABLISHING THE RIGHT TO THE EXEMPTION IS ON THE ONE WHO CLAIMS THE EXEMPTION. MACMURRY COLLEGE V. WRIGHT, 38 ILL.2D 272 (1967).

I CONCLUDE THAT THE FINDINGS OF FACT IN THIS MATTER ESTABLISH THAT THE APPLICANT IS A RELIGIOUS ORGANIZATION.

IN THE CASE OF PEOPLE EX REL. PEARSALL V. THE CATHOLIC BISHOP OF CHICAGO, 311 ILL. 11 (1924), THE ILLINOIS SUPREME COURT HELD THAT THE MERE FACT THAT A PROPERTY WAS INTENDED TO BE USED FOR AN EXEMPT PURPOSE WAS NOT SUFFICIENT TO EXEMPT SAID PROPERTY. THE COURT REQUIRED THAT THE ACTUAL PRIMARY EXEMPT USE MUST HAVE BEGUN FOR THE PROPERTY TO BE EXEMPT. IN THE CASE OF ANTIOCH MISSIONARY BAPTIST CHURCH V. ROSEWELL, 119 ILL.APP.3D 981 (1ST DIST 1983), THE COURT HELD THAT PROPERTY WHICH WAS VACANT AND NOT USED, DID NOT QUALIFY FOR THE STATUTORY EXEMPTION AS PROPERTY USED EXCLUSIVELY FOR RELIGIOUS PURPOSES, REGARDLESS OF THE OWNER'S INTENT. THE FINDINGS OF FACT IN THIS CASE CLEARLY ESTABLISH THAT WHILE THE APPLICANT OWNED THE PARCEL HERE IN ISSUE DURING THE PERIOD

SEPTEMBER 12, 1994, THROUGH DECEMBER 31, 1994, SAID PARCEL WAS NOT USED FOR PRIMARILY RELIGIOUS PURPOSES DURING THAT PERIOD. IN FACT, THIS PARCEL WAS VACANT AND NOT USED FOR ANY PURPOSE DURING THAT PERIOD.

I THEREFORE RECOMMEND THAT THIS PARCEL REMAIN ON THE TAX ROLLS FOR 30 PERCENT OF THE 1994 ASSESSMENT YEAR.

RESPECTFULLY SUBMITTED,

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GEORGE H. NAFZIGER  
ADMINISTRATIVE LAW JUDGE  
APRIL , 1996